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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b)) RM-8511
Table of Allotments)
FM Broadcast Stations)
(Reserve, New Mexico))

To: Acting Chief
Allocations Branch
Mass Media Bureau

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COMMENTS OF DUNCAN COMMUNITY RADIO

Duncan Community Radio (hereafter "DCR"), by its attorney, hereby submits these comments in the above-captioned rule making proceeding.

1. By an FCC Public Notice, dated September 7, 1994, the Commission solicited comments on a counterproposal by Acme Enterprises in MM Docket 94-60 to assign FM Channel 264C3 to Reserve, New Mexico in lieu of the proposal by DCR to assign FM Channel 264A at Duncan, Arizona.¹ On August 30, 1994, DCR filed reply comments in MM Docket No. 94-60 noting that there are presently sixteen (16) alternative FM channels that can be assigned to Reserve, New Mexico as Class C3 allotments that would not be mutually-exclusive with the proposed FM Channel 264A allocation at Duncan, Arizona. A copy of DCR's reply comments are appended hereto as Exhibit B and are incorporated herein.

¹ FCC Report Number 2028 (mimeo 44649), released September 7, 1994. This is attached hereto as Exhibit A.

No. of Copies rec'd 015
List A B C D E

2. DCR supports the assignment of any of these channels in lieu of the proposed FM Channel 264C3 allotment to Reserve, New Mexico. DCR submits that the allocation of one of these sixteen alternative channels is inherently in the public interest, and preferable to the Channel 264C3 allotment proposed by Acme, in that both Duncan, Arizona and Reserve, New Mexico will receive their first, local aural broadcast allocations.

Wherefore, based on the foregoing, DCR respectfully submits its reply comments in MM Docket No. 94-60, requests the incorporation of these comments in this proceeding, and submits that the Commission should assign one of the alternative FM Channels to Reserve, New Mexico noted therein in lieu of the FM channel 264C3 allocation proposed by Acme.

Respectfully submitted,

Duncan Community Radio

By: 

Jeffrey D. Southmayd

Its Attorney

Southmayd & Miller
1220 Nineteenth Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 331-4100

Date: September 15, 1994

EXHIBIT A



PUBLIC NOTICE

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

News media information 202/632-5050. Recorded listing of releases and texts 202/632-0002.

44649

REPORT NO. 2028

September 7, 1994

ASSOCIATE MANAGING DIRECTOR
PUBLIC INFORMATION AND REFERENCE SERVICES
PETITIONS FOR RULEMAKING FILED

(Interested persons may file statements opposing or supporting the Petitions for Rulemaking listed herein within 30 days. See Section 1.4 and 1.405 of the Commission's rules for further information).

RM No.	Rules Sec.	Petitioner	Date Rec'd	Nature of Petition
8511*	73.202(b)	Acme Enterprises (Filed by Lee J. Peltzman, Attorney Shainis & Peltzman 2000 L Street, N.W. Suite 200 Washington, D.C. 20036)	08-18-94	Request Amendment of the FM Table of Allotments to allot Ch. 264C3 to Reserve, New Mexico, at coordinates 33-41- 51; 108-46-34.

*THE ABOVE PETITIONS FOR RULEMAKING WILL BE TREATED AS COUNTERPROPOSALS IN MM DOCKET NO. 94-60. REPLY COMMENTS TO THESE COUNTERPROPOSALS SHOULD BE SUBMITTED IN THIS DOCKET NO LATER THAN 15 DAYS (RATHER THAN WITHIN 30 DAYS) AFTER THE DATE OF THIS PUBLIC NOTICE.

EXHIBIT B

RECEIPT COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
AUG 30 '94
FEDERAL COMM. COMMISSION
OFFICE OF THE
SECRETARY

MM DOCKET NO. 94-60

In the Matter of)
)
Amendment of Section 73.202(b)) RM 8455
Table of Allotments)
FM Broadcast Stations)
(Duncan, Arizona))

To: Acting Chief
Allocations Branch
Mass Media Bureau

REPLY COMMENTS OF DUNCAN COMMUNITY RADIO

Duncan Community Radio, the petitioner in the above-captioned proceeding, hereby respectfully submits these reply comments in support of the allotment of FM channel 264A at Duncan, Arizona.

1. DCR filed the initial petition for rule making requesting the assignment of FM Channel 264A to Duncan, Arizona, as that community's first local aural broadcast service.¹ DCR demonstrated in its petition that the FM Channel 264A allotment can be made in conformity with the minimum distance separation requirements of Section 73.207(b)(1) and (3) of the Commission's Rules.

¹ DCR incorporates the information contained in its petition herein.

2. On August 18, 1994, an entity identifying itself as Acme Enterprises filed comments and a counterproposal to the DCR allocation proposal. Acme proposed the assignment of FM Channel 264C3 to the community of Reserve, New Mexico.² Acme notes, correctly, that the allotment of FM channel 264C3 to Reserve, New Mexico will preclude the allotment of FM Channel 264A at Duncan, Arizona.

3. DCR's engineering consultants have reviewed the Acme counterproposal and have undertaken additional engineering studies on the availability of alternative FM Channels at Reserve, New Mexico.³ Surprisingly, DCR has ascertained that the following FM Channel C3 allotments can be made to Reserve, New Mexico in full compliance with the Commission's Rules and Regulations in lieu of the FM Channel 264C3 allotment: 234, 235, 241, 246, 247, 248, 259, 273, 278, 283, 285, 287, 289, 291, 292 and 296.⁴ The allotment of any of these channels to Reserve, New Mexico will not preclude the assignment of FM Channel 264A at Duncan, Arizona. These channels can be assigned at the hypothetical transmitter site proposed by Acme.

2 DCR will not dispute that Reserve, New Mexico is a "community" for the purposes of the Commission's FM channel allotment scheme under the FCC's rules and policies due to the facts that will be developed herein.

3 An engineering statement is attached hereto as Exhibit A.

4 DCR is surprised that Acme was unable to ascertain the availability of these other FM Channels at Reserve. One could infer that Acme's real intention is to attempt to impede the allocation of FM Channel 264A to Duncan, Arizona, or at least delay same, rather than have an FM Channel C3 assignment at Reserve, New Mexico.

4. It is well established that the Commission's public interest mandate is better served by the allocation of first local broadcast allocations to two communities rather than a proposal that will result merely in the allotment of a single channel to one community. DCR proposes that the Commission assign any one of the above-referenced FM Class C3 channels to Reserve, New Mexico in lieu of the counterproposed FM channel 264C3 allotment. Such an action will allow for the assignment of the first, local FM channel at Duncan, Arizona and Reserve, New Mexico.

Wherefore, DCR submits that the Commission should make a Class C3 allotment at Reserve, New Mexico from its choice FM channels 234, 235, 241, 246, 247, 248, 259, 273, 278, 283, 285, 287, 289, 291, 292 or 297.

Respectfully submitted,

Duncan Community Radio

By: 

Jeffrey D. Southmayd

Its Attorney

Southmayd & Miller
1220 Nineteenth Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 331-4100

Date: August 30, 1994

EXHIBIT A

DECLARATION
ENGINEERING STATEMENT

Thomas J. Johnson says that he is an engineer and Vice President of Lechman & Johnson, Inc., with offices located at 16201 Trade Zone Avenue, Suite 106, Upper Marlboro, Maryland 20772, and his qualifications are a matter of record with the Federal Communications Commission.

That Lechman & Johnson, Inc., has been retained by Duncan Community Radio ("Duncan") to respond to a counterproposal by Acme Enterprises ("Acme") in MM Docket No. 94-60, RM-8455, adopted June 9, 1994 and released June 28, 1994. Acme's counterproposal is mutually exclusive with Duncan's proposed amendment of Section 73.202(b), Table of Allotments to assign FM Channel 264A to Duncan, Arizona. Acme's attorney states "Because of the rural nature of the area surrounding Reserve, Acme is desirous of providing a wide coverage area serve to Reserve and does not have any interest in the limited coverage which would be supplied by a lesser power channel for the community of Reserve." Its engineer has chosen a transmitter site that would provide line-of-sight and unobstructed propagation of a radio signal to Reserve, New Mexico from the following geographic coordinates:

North Latitude: 33° 40' 00"
West Longitude: 108° 48' 00"

Duncan has confirmed that the site selected is ideal for an FM station.

Acme requests that Channel 264C3 be allocated to Reserve. A complete FM band study of all channels from 221 to 300 were run using the designated site chosen by Acme. Evaluation of the study reveals that the following Class C3 assignments can be allocated to Reserve in compliance with the Commission Rules and Regulations. These channels are 234, 235, 241, 246, 247, 248, 259, 273, 278, 283, 285, 287, 289, 291, 292, and 296. Since Acme is concerned and desirous of providing a wide coverage area service, additional channels 227, 252, 277, 286, 290, and 297 can be allocated as Class C2 allotments, of which two of these channels can be allocated full Class C status.

It is recommended that the Commission allocate another Class C3 channel to Reserve and remove the mutually exclusive proposal by Acme, allowing both communities a first full-time aural service.

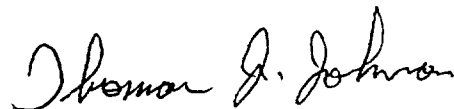
DECLARATION - ENGINEERING STATEMENT

August 29, 1994

Page Two

I declare under the penalty of perjury that the foregoing is correct.

LECHMAN & JOHNSON, INC.

A handwritten signature in cursive script, reading "Thomas J. Johnson".

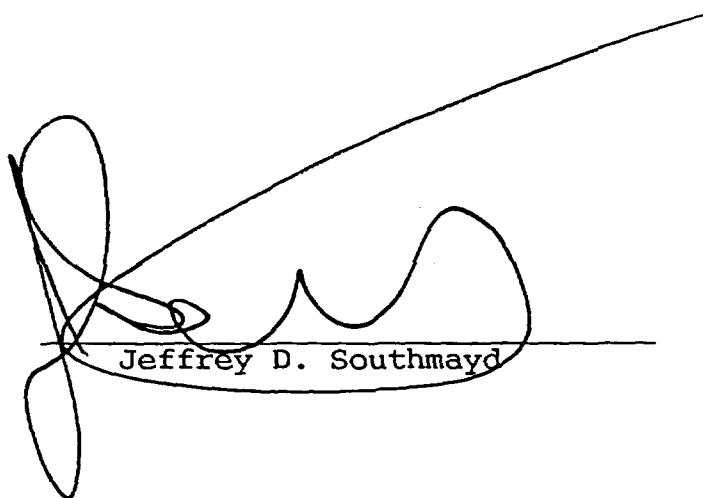
Thomas J. Johnson
Consulting Engineer
August 29, 1994

CERTIFICATE OF SERVICE

I, Jeffrey D. Southmayd, do hereby certify that on this 30th day of August, 1994, I have caused copies of the foregoing to be served by first class mail, postage pre-paid, on the following:

Mr. Larry Eads
Chief, Mass Media Bureau
Federal Communications Commission
1919 M. Street, N.W., Room 302
Washington, D.C. 20554*

Lee J. Peltzman, Esquire
Shainis & Peltzman
Suite 200
2000 L Street, N.W.
Washington, D.C. 20036
Counsel to Acme Enterprises



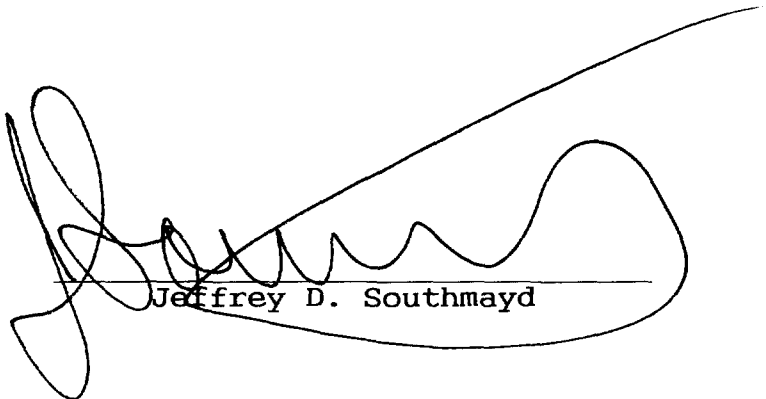
Jeffrey D. Southmayd

CERTIFICATE OF SERVICES

I, Jeffrey D. Southmayd, do hereby certify that I have caused copies of the foregoing Comments of Duncan Community Radio to be served by first class mail, postage prepaid, on the following on this 15th day of September, 1994.

Mr. John Karousos
Acting Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

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Counsel to Acme Enterprises



Jeffrey D. Southmayd